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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 SUCCESSFACTORS, INC, a Delaware  
corporation,

13 Plaintiff,

14 vs.

15 SOFTSCAPE, INC., a Delaware corporation,  
16 and DOES 1-10, inclusive,

17 Defendants.

Case No. C08-1376 CW (BZ)

**DISCOVERY MATTER**

**MOTION BY DEFENDANT  
SOFTSCAPE, INC. FOR AN ORDER  
ENLARGING TIME AND MODIFYING  
THIRD DISCOVERY ORDER**

[N.D. Civ. L.R. 6-3]

Judge: Honorable Bernard Zimmerman

19  
20 Pursuant to Northern District Civil Local Rule 6-3, Defendant Softscape, Inc. ("Softscape")  
21 hereby moves for an order enlarging time and extending each of the deadlines set forth in this  
22 Court's Third Discovery Order (Document No. 159), filed on July 7, 2008. For the reasons set forth  
23 below, good cause exists for the Court to grant this request.

24 **Procedural and Factual History**

25 On July 3, 2008, this Court held a discovery conference wherein the parties raised issues  
26 concerning the timing and sufficiency of their respective document productions. In response, the  
27 Court issued an order on July 7, 2008 requiring Softscape to produce "Tier One" documents related  
28 to six specific custodians on or before July 15, 2008 and both parties to produce all documents

1 responsive to discovery requests outstanding at that time on or before August 1, 2008. (Document  
2 No. 159). Since that time, as explained below, Softscape has made an extraordinary effort to  
3 comply with those deadlines.

4 Last week, Softscape's counsel informed Laurence Pulgram, Esq., lead trial counsel for  
5 Plaintiff SuccessFactors, Inc. ("SuccessFactors"), that Softscape – despite a substantial effort to  
6 complete its production by the August 1<sup>st</sup> deadline established by the Court – would need additional  
7 time to complete that production. Softscape's counsel suggested to Mr. Pulgram that the parties  
8 mutually propose to the Court an extension of two weeks, to August 15<sup>th</sup>, for both sides to complete  
9 their document productions. Mr. Pulgram informed Softscape's counsel today that SuccessFactors  
10 will not stipulate to such an extension. Declaration of Robert P. Taylor in Support of Motion for  
11 Order Enlarging Time ("Taylor Decl.") at ¶ 2.

12 As noted above, the August 1<sup>st</sup> date for the completion of document discovery was set by  
13 Magistrate Judge Zimmerman on July 3, 2008. At the time of the hearing, counsel for Softscape  
14 believed that the size of the task was such that this deadline was achievable and did not ask for  
15 more time. Since the July 3<sup>rd</sup> hearing, Softscape has produced over 700 responsive electronic files  
16 containing nearly 13,000 pages. Softscape made these productions on July 15, 16, 17, 18, 21, 23,  
17 and 25<sup>th</sup> as documents were processed for production. Softscape has also produced approximately  
18 400 pages of documents in hard copy since July 3, 2008. *Id.* at ¶ 3.

19 Despite a diligent and dedicated effort to complete the entirety of the Softscape production  
20 within the time frame set by the Court, the quantity of material to be searched and the magnitude of  
21 the task of reviewing that material has been larger than Softscape or Mintz Levin anticipated. The  
22 review process started with more than a terabyte of data to be searched electronically. A list of  
23 over 50 search terms agreed to by the parties in late June, while a manageable number in an of  
24 itself, contains certain very general root terms (e.g., the root word "success" in Success Factors)  
25 that tend to generate far more nonresponsive hits than responsive ones. All of these nonresponsive  
26 documents, however, must be reviewed in their entirety thereby expanding greatly the size of the  
27 review effort. *Id.* at ¶ 4.

28 The Mintz Levin document review team presently consists of five associate lawyers

1 devoting between two-thirds and all of their time specifically to the document review process. In  
2 addition, two other Mintz Levin lawyers, a partner and an of counsel, manage the overall day-to-  
3 day aspects of the case (including assisting with document review) and are devoting approximately  
4 half to three-quarters of their time to this matter on a daily basis. Needless to say, the cost of this  
5 effort for a small company such as Softscape is already a substantial burden. *Id.* at ¶ 5.

6 Currently, the search process is substantially complete, but Mintz Leven lawyers still have  
7 thousands of potentially responsive documents that must be reviewed before they can be produced.  
8 Given this, it is not possible to complete the review and production of all responsive documents by  
9 August 1<sup>st</sup>. Based on the current rate of document review and the size of the task remaining,  
10 counsel anticipates that Softscape can complete its production on or before August 15<sup>th</sup>. *Id.* at ¶ 6.

11 The short extension Softscape requests should not have any significant impact on any of the  
12 other dates in the case. Discovery cutoff is currently set for November 26<sup>th</sup> and would not have to  
13 be moved based upon a two week extension. The parties are discussing dates in late August and  
14 September for the depositions of Softscape employees. *Id.* at ¶ 7.

15 **Good Cause Exists To Grant The Requested Relief and Softscape will Suffer Prejudice**

16 Good cause exists to grant the requested relief. Specifically, counsel for Softscape is  
17 working diligently on the review of the significant number of search results generated by the search  
18 term list. Indeed, Mintz Levin has dedicated substantial resources to the document review process.  
19 Moreover, while the parties are discussing dates in late August and September for the depositions  
20 of a number of Softscape employees, no firm dates have been formally noticed.

21 Softscape will be substantially harmed and/or prejudiced if the Court does not extend the  
22 mutual deadline for production as: (1) Softscape will be in technical violation of a Court order and  
23 potentially subject to sanctions; (2) Softscape will not have sufficient time for its counsel to  
24 conduct and complete a reasonable review of the substantial volume of search results produced by  
25 the search terms; and (3) Softscape may be prejudiced by its inability to properly protect its trade  
26 secret and confidential information and/or attorney client communications.

27 While the interests in efficiency and judicial economy would be served by granting  
28 Defendant's request to enlarge time, Plaintiff will not suffer any substantial harm or prejudice.

**Conclusion**

Accordingly, Defendant Softscape, Inc. respectfully requests that the Court modify the Third Discovery Order as follows:

- The parties must produce all responsive documents ready for production as of July 31, 2008 by the close of business on **August 1, 2008**.
- The parties must produce all responsive documents ready for production as of August 7, 2008 by the close of business on **August 8, 2008**.
- All document productions by the parties must be complete on or before **August 15, 2008**.

Dated: July 28, 2008

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO P.C.

/s/ Bryan J. Sinclair

By: ROBERT P. TAYLOR  
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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

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**[PROPOSED] ORDER GRANTING  
MOTION BY DEFENDANT  
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[N.D. Civ. L.R. 6-3]

Judge: Honorable Bernard Zimmerman

Having considered Defendant Softscape, Inc.'s motion for an order enlarging time and extending the deadlines set forth in this Court's Third Discovery Order (Document No. 159), filed on July 7, 2008, pursuant to N.D. L.R. 6-3, and for good cause appearing therefore,

IT IS HEREBY ORDERED that the Court's Third Discovery Order, be modified as follows:

1. The parties are required to produce all responsive documents ready for production as of July 31, 2008 by the close of business on **August 1, 2008**.
2. The parties are required to produce all responsive documents ready for production as

1 of August 7, 2008 by the close of business on **August 8, 2008**.

2 3. All document productions by the parties must be complete on or before **August 15,**  
3 **2008.**

4 Dated: \_\_\_\_\_

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6 \_\_\_\_\_  
The Honorable Bernard Zimmerman  
United States Magistrate Judge  
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